SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

No. 264.

CHARLES S. MAXWELL, PLAINTIFF IN ERROR,

vs.

GEORGE S. DOW, AS WARDEN OF THE UTAH STATE PRISON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF UTAH.

FILED AUGUST 24, 1892.

(17,495.)

(17,498.)

SUPREME COURT OF THE UNITED STATES.

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CHARLES L. MAXWELL, PLAINTIFF IN ERROR,

vs.

GEORGE N. DOW, AS WARDEN OF THE UTAH STATE PRISON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF UTAH.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 11, 1899.

1 In the Supreme Court of the State of Utah.

C. L. MAXWELL, Plaintiff,
v.
GEORGE N. DOW, as Warden of the Utah State Prison, Defendant.

Petition for Writ of *Habeas Corpus.*

To the honorable supreme court of the State of Utah:

The petition of C. L. Maxwell respectfully shows:

That he, the said C. L. Maxwell, is unlawfully imprisoned, detained, confined, and restrained of his liberty by George N. Dow, the warden of the Utah State prison, at the county of Salt Lake, in the State of Utah.

That the said imprisonment, detention, confinement, and restraints are illegal, and that the illegality thereof consists in this, to wit:

1. Your petitioner, C. L. Maxwell, is a natural-born citizen of the United States of America and subject to the jurisdiction thereof.

2. On the 27th day of June, 1898, at Provo City, Utah county, State of Utah, and in the fourth judicial district court of said State of Utah in and for said Utah county, the county and prosecuting attorney of Utah county made and caused to be filed in said court an instrument in writing commonly called an information,
2 wherein and whereby he assumed to charge your petitioner, under the name of John Carter, with the crime of robbery, a copy of which said information is hereto attached, marked Exhibit "A," and made a part of this petition.

3. That thereafter, to wit, on the 7th day of July, 1898, your petitioner was arraigned in said court, said alleged information was read to him, and he was required to say whether or not he was guilty of the crime charged in said instrument of writing then and there by the said court denominated an information; upon which demand he, your petitioner, said he was not guilty.

4. Thereafter, to wit, on the 19th day of September, 1898, in said court your petitioner was placed on trial upon said charge of robbery, as alleged in said information, before the court and a pretended jury, the same being a body of eight men only, who, after hearing the testimony offered at the said pretended trial, said, by a pretended verdict, a copy of which is hereto attached, marked Exhibit "B," and made a part of this petition, that your petitioner was guilty as charged in said information.

5. Upon said pretended verdict, rendered by only eight persons, the said court, on the said 19th day of September, 1898, pronounced its judgment against your petitioner that he be imprisoned in the State prison of the State of Utah, at the county of Salt Lake, for the term of eighteen years from said date.

6. That in accordance with and in execution of said judgment your petitioner was on said date delivered into the custody of the said defendant, George N. Dow, as warden of said State prison, and that said defendant has ever since said time imprisoned and still continues to imprison your petitioner in said State prison.

3 A copy of the said judgment and commitment is hereto attached, marked Exhibit "C," and made a part of this petition.

7. Your petitioner has never been in any other manner proceeded against nor tried for said charge than that above set forth, and there is no other cause for the imprisonment of your petitioner than those above set forth.

Your petitioner says that his imprisonment, based upon the foregoing statement of facts, is unlawful for the following reasons:

1. Holding him to answer for the crime of robbery, except on a presentment or indictment of a grand jury, abridges his privileges and immunities as a citizen of the United States as guaranteed by article V of the amendments to the Constitution of the United States, which provides that "no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, etc.," and section one of article XIV of the amendments to the Constitution of the United States, which provides: "All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

2. Trying him by a pretended jury of only eight persons abridges his privileges and immunities as a citizen of the United States as guaranteed by article VI of the amendments to the Constitution of the United States, which provides as follows: "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed," etc., and section one of article

4 XIV of the amendments to the Constitution of the United States, which provides: "All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

3. The trial of your petitioner by a pretended jury of only eight persons and upon a verdict of guilty by said persons, imprisoning him in the State prison, is depriving him of his liberty without due process of law, and is in violation of his rights as guaranteed by section one of article XIV of the amendments to the Constitution of the United States, which provides: "No State shall deprive any person of life, liberty, or property without due process of law."

4. That section ten of article one and section thirteen — one of the constitution of the State of Utah, compelling your petitioner to be tried for a felony, except by a jury composed of twelve persons, and holding him to answer for a charge of felony, to wit, robbery, except on a presentment or indictment of a grand jury, abridge his privileges and immunities as a citizen of the United States, and said section ten, compelling him to be tried only by eight persons instead of a jury, deprives him of his liberty without due process of law, and said sections are in contravention of section one of article XIV of

the amendments to the Constitution of the United States, which provides: "That all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law abridging the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law," and
5 are therefore void.

VIII. That the legality of the imprisonment of your petitioner has not already been adjudged upon a prior proceeding of the same character, to the best knowledge and belief of your petitioner.

IX. No application for the writ of *habeas corpus* has heretofore been made to and refused by any court or judge.

Wherefore your petitioner prays that a writ of *habeas corpus* may be granted, directed to the said George N. Dow, warden as aforesaid, commanding him to have the body of C. L. Maxwell, your petitioner, before your honors at a time and place therein to be specified, to do and receive what shall then and there be considered by your honors concerning said C. L. Maxwell, together with the time and cause of his detention and said writ, and that he, said C. L. Maxwell, may be restored to his liberty.

C. L. MAXWELL,
By J. W. N. WHITECOTTON,
His Attorney.

STATE OF UTAH, } ss.:
Utah County, }

J. W. N. Whitecotton, being first duly sworn, says:

I am the attorney for C. L. Maxwell and on his behalf make the foregoing application for a writ of *habeas corpus*. I have read the foregoing petition and know the contents thereof, and believe the same to be true.

J. W. N. WHITECOTTON.

Subscribed and sworn to before me this 2nd day of May, 1899.

JOSEPH S. FARRAR,
Notary Public.

[SEAL.]

6 In the District Court of the Fourth Judicial District of the State of Utah in and for the County of Utah, the 18th Day of June, A. D. 1898.

THE STATE OF UTAH, Plaintiff,
v.
JOHN CARTER, Defendant. } Information. Exhibit "A."

John Carter, having heretofore, on the 28th day of May, A. D. 1898, been duly bound over by John S. Boyer, a committing magistrate in and for Utah county, State of Utah, to answer to this charge, is accused by Samuel A. King, the county attorney of Utah

county, State of Utah, by this information of the crime of robbery, committed as follows: The said John Carter, on the 28th day of May, A. D. 1898, at the county of Utah, in the State of Utah, did unlawfully, violently, forcibly, and feloniously make an assault in and upon one A. C. Packard, then and there being, and then and there did unlawfully, wilfully, forcibly, and feloniously him, the said A. C. Packard, put in fear, and two thousand three hundred and seventy dollars in gold coin, lawful money of the United States, of the value of two thousand three hundred and seventy dollars, the personal property of the Springfield Banking Company, a corporation organized and existing under and by virtue of the laws of the State of Utah, then and there being in the possession of
7 said A. C. Packard, and from the immediate presence of him, the said A. C. Packard, unlawfully, wilfully, forcibly, violently, and feloniously did take, steal, and carry away, against the will of the said A. C. Packard, and accomplished by means of force and fear, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Utah.

SAMUEL A. KING,
County Attorney of Utah County, State of Utah.

Names of witnesses examined before the committing magistrate:

No witnesses were examined before the committing magistrate, for the reason that the defendant waived his preliminary examination, to which waiver the State then and there consented.

Endorsed: 97. State of Utah *v.* John Carter. Information. Filed at Provo City, Utah, Jun- 27, 1898. Geo. Havercamp, clerk.

8 In the District Court of the Fourth Judicial District, County of Utah, State of Utah.

THE STATE OF UTAH, Plaintiff,
v.
C. L. MAXWELL, alias JOHN CARTER, Defendant. } Verdict. Exhibit "B."

We, the jury, empanneled in the above-entitled cause, find the defendant, C. L. Maxwell, guilty as charged in the information.

ALFRED DUNCKLEY, *Foreman.*

Dated at Provo, Utah, September 19, 1898.

Endorsed: 97. Verdict. Filed this 19th day of September, 1898. Geo. Havercamp, clerk.

9 At a stated term of the district court for the fourth judicial district, State of Utah, held at the court-room of said court, at Provo, county of Utah and State of Utah, on the 19th day of September, A. D. 1898.

Present: The Hon. Warren N. Dusenberry, judge.

THE STATE OF UTAH
against
C. L. MAXWELL, alias JOHN CARTER. } Commitment to State Prison. Exhibit "C."

Defendant being present in court and ready for sentence, thereupon the court renders its judgment:

That whereas said defendant, C. L. Maxwell, having been duly convicted in this court of the crime of robbery, it is therefore ordered, adjudged, and decreed that the said C. L. Maxwell be imprisoned in the State prison of the State of Utah, at the county of Salt Lake, for the term of eighteen years hereof.

You, said defendant, C. L. Maxwell, are rendered into the custody of the sheriff of Utah county, State of Utah, to be by him delivered into the custody of the warden or other proper officer of said State prison.

WARREN N. DUSENBERRY, *Judge.*

Endorsed: No. 97. The State of Utah *v.* C. L. Maxwell. Warrant of commitment. Filed on return the 20th day of September, 1898. Geo. Havercamp, clerk.

Endorsed on cover: In the supreme court of the State of Utah. C. L. Maxwell, plaintiff, *v.* George N. Dow, def't. Application for writ of *habeas corpus.* Original. Filed May 3, 1899. Lilburn P. Palmer, clerk supreme court Utah.

10 In the Supreme Court of the State of Utah, Regular May Term, May 24th, 1899.

C. L. MAXWELL, Plaintiff,
v.
GEORGE N. DOW, as Warden of the Utah State Prison, Defendant. } Submission.

This cause, coming on regularly to be heard, was argued by Mr. J. W. N. Whitecotton in behalf of the plaintiff, by Mr. W. A. Lee, deputy attorney general, in reply, was submitted, and by the court taken under advisement.

Title of Court and Cause.

JUNE 1, 1899.

This cause having been heretofore argued and submitted and the court being now sufficiently advised thereon, it is now here considered, ordered, and adjudged that the writ of *habeas corpus* as prayed for be, and the same is hereby, denied.

11 In the Supreme Court of the State of Utah.

In the Matter of the Application of C. L. MAXWELL for a Writ of *Habeas Corpus.*

MINER, *J.:*

The plaintiff in his petition alleges that he is a citizen of the United States; that on the 27th day of June, 1898, in the 4th judi-

cial district court, in Utah county, Utah, the county attorney of said county made and filed in said county an information in writing, charging the petitioner under the name of John Carter with the crime of robbery; that thereafter the petitioner was duly arraigned on such information and a plea of not guilty entered.

That thereafter, on the 19th day of September, 1898, said petitioner was placed on trial on the charge contained in said information before the court and eight jurors and found guilty of said charge, and duly sentenced to the State prison at Salt Lake City, Utah, for the period of 18 years; that the petitioner is now confined in the State prison and imprisoned there by Geo. N. Dow, the warden of said prison, and is serving such sentence.

The petitioner claims that such conviction and imprisonment is illegal for the reason:

1st. That holding him to answer for a charge of felony otherwise than upon a presentment or indictment of a grand jury
12 abridges his privileges and immunities as a citizen of the United States, contrary to section 1 of art. 14 of the amendments to the Constitution of the United States.

2nd. That in trying him before a jury of only eight persons instead of twelve, and upon a verdict of guilty by such a jury, pronouncing judgment against him, requiring that he be imprisoned in the State prison for a period of eighteen years, abridges his privileges as a citizen of the United States, contrary to the provisions of articles 6 of the amendments to the Constitution of the United States.

3rd. That by reason of the verdict of guilty by a jury of eight persons and the judgment of imprisonment thereon he has been deprived of his liberty without due process of law, within the meaning of section 1 of article 14 of the amendments to the Constitution of the United States.

In the case of *Ex parte* McKee, decided at the January term of this court, 57 Pac. Rep., —; 18 Utah, —, the same questions were raised as are embraced in the second and third grounds contained in the complaint in this case. In that case, after a careful examination of the Constitution and statutory provisions of the law and many decisions bearing thereon, we held, in substance, that the prohibitory provision of the 5th and 6th amendment to the Constitution of the United States applies exclusively to the United States and not to the respective States.

2nd. That the fourteenth amendment to the Constitution of the United States does not limit the power of State governments in the prosecution of criminals to any particular mode of procedure in the selection of its jurors or manner of conducting its trials, but does require that such trials shall be conducted in due course of law according to the prescribed forms and judicial procedure of
13 the State for the protection of the individual rights and liberties of its citizens.

3rd. That sec. 10, art. 1, of the constitution of Utah is not in conflict with the Federal Constitution or the amendments thereto, and a conviction under sec. 1295, Rev. Stat., is legal and in due process

of law, and not in violation of the fourteenth amendment to the Constitution of the United States.

4th. That under sec. 10, art. 1, const. Utah, and sec. 1295, Rev. Stat. 1898, a jury for the trial of one accused of grand larceny committed since the State was admitted into the Union may lawfully consist of eight jurors.

Upon an examination of this case we discover no good reason for modifying our opinion in the above case. The decision therein is correct, and is also decisive of the questions embraced in the petitioner's contention above referred to.

It is also contended that the petitioner was held to answer a charge of felony otherwise than upon a presentment or indictment of a grand jury, and that he was held, convicted, and imprisoned upon an information filed by the county attorney charging him with a felony; that such acts were illegal and abridge his privileges and immunities as a citizen of the United States under sec. 1, art. 14, of the amendments to the Constitution of the United States, which provides that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

It is contended that the provision that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States" applies and extends to citizens of each State and to State courts.

14 Sec. 18, art. 1, of the constitution of Utah provides: "Offenses heretofore required to be prosecuted by indictment, shall be prosecuted by information after examination and commitment by a magistrate, unless the examination be waived by the accused with the consent of the State, or by indictment, with or without such examination and commitment. The grand jury shall consist of seven persons, five of whom must concur to find an indictment; but no grand jury shall be drawn or summoned unless in the opinion of the judge of the district, public interest demands it."

Sec. 21, art. 8, const. Utah, reads as follows: "Judges of the supreme court, district courts, and justices of the peace, shall be conservators of the peace, and may hold preliminary examinations in cases of felony."

In Walker *v.* Sauvinet, 92 U. S., 90, it was said, upon a discussion of this same question, in an action which was brought by a colored man against the keeper of a coffee-house in New Orleans for refusing him refreshments, in violation of the constitution of the State securing to the colored race equal rights and privileges in such cases, that a trial by jury was not a privilege or immunity of citizenship which the States were forbidden to abridge, but the requirement of due process of law was met if the trial was had according to the settled course of judicial proceedings. "Due process of law," said Chief Justice Waite, "is process due according to the law of the land. This process in the States is regulated by the law of the

State." This law was held not to be in conflict with the Constitution of the United States.

In Hurtado *v.* California, 110 U. S., 516, it was held that due process of law did not necessarily require an indictment by a grand jury in a prosecution by a State for murder. The constitu-
15 tion of California authorized prosecutions for felonies by information, after examination and commitment by a magistrate, without an indictment by a grand jury, in the discretion of the legislature. It was held that conviction upon such an information, followed by sentence, was not illegal under the fourteenth amendment.

In Hallinger *v.* Davis, 146 U. S., 314, it was held in substance that a statute of a State conferring upon an accused person the right to waive a trial by jury and to elect to be tried by a court and conferring power upon the court to try the accused in such case was not a violation of the due process of law clause of the fourteenth amendment.

So, in *In re* Kemmler, 136 U. S., 436, it was held that the law providing for capital punishment by electricity was not repugnant to this amendment.

In Duncan *v.* Missouri, 152 U. S., 377, it was said that the prescribing of different modes of procedure and the abolition of courts and the creation of new ones, leaving untouched all the substantial protections with which the existing law surrounds persons accused of crime, are not considered within the constitutional inhibition.

The case of Hurtado *v.* California was again referred to and affirmed in the case of Holden *v.* Vermont, 168 U. S., 262. After holding that it was not necessary that an indictment by a grand jury be found in a prosecution by a State for murder, the court said: "It is further claimed that the conviction of the plaintiff and his sentence to infamous punishment was without due process of law because he was not indicted by a grand jury. Discussion of this contention is unnecessary because it was the very matter considered in Hurtado *v.* California, 110 U. S., 516, where it was ruled that the words 'due process of law' in the fourteenth amend-
16 ment of the Constitution of the United States do not necessarily require an indictment by a grand jury in a prosecution by a State for murder. The views expressed in that case have been approved and followed in a number of subsequent cases."

Barbier *v.* Connolly, 113 U. S., 27.
In re Kemmler, 136 U. S., 436.
Ex parte Converse, 137 U. S., 624.
Hallinger *v.* Davis, 146 U. S., 314.

In *Ex parte* Converse, 137 U. S., 624, the court said:

"This amendment was not designed to interfere with the power of the State to protect the lives, liberty, and property of its citizens, nor with the exercise of that power in the adjudications of the courts of a State in administering the process provided by the law of the State."

In *Ex parte* McKee, *supra*, this court, among other things, said:

"The fourteenth amendment was not designed to confine the States to a particular mode of procedure in judicial proceedings. It does not mean nor has it the effect to limit the power of State governments in the prosecution of criminals to any particular mode of procedure in the selection of its jurors or manner of conducting its trials, but did require that such trials shall be conducted in the due course of the administration of justice according to the prescribed forms and judicial procedure of the State for the protection of the individual rights and liberties of its citizens. That which the common law tolerated might be regarded as due process of law, but methods and procedure which were unknown to the common law cannot be discarded if they are consistent with the cardinal principles and ground-work which are necessary to the administration of justice in the several States. As said in Hurtado *v.* California, *supra*, it follows that any legal proceeding enforced by public authority, whether sanctioned by age and custom or newly
17 devised in the discretion of the legislative power in furtherance of the general public good, which requires and preserves these principles of liberty and justice, must be held to be due process of law."

Holden *v.* Hardy, 169 U. S., 366.

The decisions from the Federal courts upon the question involved renders it unnecessary to pursue the investigation further. It is clear from the authorities referred to that the petitioner was deprived of no constitutional right by being held to answer to a charge of felony otherwise than upon presentment or indictment of a grand jury.

In passing upon the validity of the acts of this State under sec. 1 of article 14 of the amendments and in examining authorities controlling such action, it will be seen that law is progressive. The method and mode of procedure in many States have changed in order to keep pace with the constant changing future and necessities of the period. Many of the methods of procedure in force when the Constitution was adopted are found to be no longer necessary. Many restrictions placed upon the citizen at an early date were found to be injurious to the interests of the people as years rolled by, and many were found to be in need of greater and additional protection under the laws. In several States grand juries have been abolished, and prosecutions by information has been substituted in its place. The system of 12 jurors in criminal cases, not capital, and in civil cases has been discarded in many States and a less number provided, with the right in civil cases to a two-thirds majority verdict, and these changes have been sustained by decisions of courts of the highest authority. As was said in Hurtado *v* California, *supra*, "the Constitution was made for an undefined and expanding future and for a people gathered and to be gathered from many nations and many tongues."

18 While the cardinal principles of justice are unchangeable, the methods by which trials are conducted are undergoing

constant and in many instances necessary changes to satisfy the pressing needs of the people, and the Constitution should not be so construed as to deprive a State of the power to so modify or change it- laws as to make them conform to the wishes and necessities of its people and of the public welfare, but without bringing them in violation of the fundamental law.

As a trial under State laws under an information filed by State authority, in the absence of a presentment of a grand jury, in the case of Hurtado *v.* California was held to be by due process of law, it is difficult to see why the same proceedings and trial under the laws of this State should abridge the privileges or immunities of the petitioner or deprive him of his liberty without due process of law.

The trial and conviction of the petitioner under the constitution and laws of this State upon an information duly filed against him by the county attorney did not take from or abridge his privileges or immunities as a citizen of the United States, nor were the provisions of the fourteenth amendment violated by his trial and conviction in the manner as provided by the laws of the State of Utah.

The writ of *habeas corpus* prayed for in the petition is denied.

We concur:

BARTCH, *C. J.*

BASKIN, *J.*

19 Filed Jul- 20, 1899. Lilburn P. Palmer, clerk supreme court Utah.

In the Supreme Court of the United States.

CHARLES L. MAXWELL, Plaintiff in Error,
vs.
GEORGE N. DOW, as Warden of the Utah State Prison, Defendant in Error.
} Petition for Writ of Error.

Comes now Charles L. Maxwell, the plaintiff herein, and respectfully shows to the court:

1. That he is a natural-born citizen of the United States.

2. That on the 27th day of June, 1898, at Provo City, Utah county, State of Utah, and in the fourth judicial district court in and for said county, the prosecuting attorney of said county made and caused to be filed in said court an information, whereby he charged this plaintiff with the crime of robbery, calling plaintiff by the name of John Carter.

3. That thereafter, to wit, on the 7th day of July, 1899, plaintiff was arraigned in said court upon said information, and entered a plea of "not guilty."

4. Thereafter, to wit, on the 19th day of September, 1898, in said court, plaintiff was tried in said court upon said charge of robbery, as charged in said information, before the court and a pretended jury of only eight persons, who, after hearing the testimony offered, said by a pretended verdict that plaintiff was guilty as charged in said information, and upon said verdict the said court

pronounced its judgment against plaintiff, that he be imprisoned in the State prison of the State of Utah for eighteen years.

5. That ever since said date plaintiff has been and still is imprisoned in said prison.

20 6. That on or about the — day of May, 1899, plaintiff filed in the supreme court of the State of Utah his petition for a writ of *habeas corpus* against George N. Dow, as warden of said prison, in which petition he set forth all the foregoing facts and prayed said court that he might be discharged from said imprisonment on the following grounds, to wit:

1. That holding him to answer for the crime of robbery, except upon a presentment or indictment of a grand jury, abridges his privileges and immunities as a citizen of the United States as guaranteed by article V of the amendments to the Constitution of the United States, which provides that "No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury," etc., and section one of article XIV of the amendments to the Constitution of the United States, which provides: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

2. Trying him by a pretended jury of only eight persons abridges his privileges and immunities as a citizen of the United States as guaranteed by article VI of the amendments to the Constitution of the United States, which provides as follows: "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed," etc., and section one of article XIV of the amendments to the Constitution of the United States, which provides: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law, which shall abridge the priv-

21 ileges or immunities of citizens of the United States."

3. The trial of your petitioner by a pretended jury of only eight persons and upon a verdict of guilty by said persons imprisoning him in the State prison is depriving him of his liberty without due process of law and is in violation of his rights as guaranteed by section one of article XIV of the amendments to the Constitution of the United States, which provides: "No State shall deprive any person of life, liberty, or property, without due process of law."

4. That section ten of article one and section thirteen of article one of the constitution of the State of Utah, compelling your petitioner to be tried for a felony except by a jury composed of twelve persons and holding him to answer for a charge of felony, to wit, robbery, except on a presentment or indictment of a grand jury, abridges his privileges and immunities as a citizen of the United States, and said section ten, compelling him to be tried by only

eight persons instead of a jury, deprives him of his liberty without due process of law, and said sections are in contravention of section one of article XIV of the amendments to the Constitution of the United States, which provides that "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law abridging the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law," and are therefore void.

7. That said cause came on regularly to be heard in said supreme court on the — day of May, A. D. 1899, and after hearing arguments the court took the cause under advisement, and subsequently, to wit, on the — day of May, 1899, rendered its judgment, whereby it ruled each and every of said contentions against the plain-
22 tiff, and expressly decided that none of the matters or things set out in said petition, which were not controverted as matters of fact, denied to plaintiff any right, privilege, or immunity guaranteed to him by the Constitution of the United States.

In the judgment of the supreme court of the State of Utah this plaintiff is by his counsel advised and verily believes, and therefore states, that error was committed to his great detriment and injury, which will more fully appear from the assignment of errors which is filed with this petition.

Wherefore the plaintiff prays—

That a writ of error may issue in this behalf to the supreme court of the State of Utah for the correction of the errors so complained of, and that a transcript of the record, proceedings, and papers in the cause, duly authenticated, may be sent to the Supreme Court of the United States.

Dated July 20th, 1899.

CHARLES L. MAXWELL,
By J. W. N. WHITECOTTON,
His Attorney.

Attorney's address: Provo, Utah.

23 Filed Jul- 20, 1899. Lilburn P. Palmer, clerk supreme court Utah.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Utah, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Utah, before you or some of you, being the highest court of law of the said State in which a decision could be had in the said cause between Charles L. Maxwell and George N. Dow, as warden of the Utah State prison, wherein was drawn in question the validity of the constitution and laws of the State of Utah and an authority exercised under said State, on the ground of their being repugnant

to the Constitution of the United States, and the decision was in favor of such their validity, a manifest error hath happened, to the great damage of the said Charles L. Maxwell, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the eighteenth day of September, A. D. 1899, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of said Supreme Court, the twentieth day of July, A. D. 1899.

[Seal United States Circuit Court, District of Utah.]

JERROLD R. LETCHER,
Clerk U. S. Circuit Court, District of Utah.

Allowed by—

G. W. BARTCH,
Chief Justice of the Supreme Court of the State of Utah.

24 UNITED STATES OF AMERICA, *ss:*

To George N. Dow, as warden of the Utah State prison, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within sixty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Utah, at Salt Lake City, wherein Charles L. Maxwell is plaintiff in error and George N. Dow is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George W. Bartch, chief justice of the supreme court of the State of Utah, this twentieth day of July, A. D. 1899.

G. W. BARTCH,
Chief Justice of the Supreme Court of the State of Utah.

Filed Jul- 20, 1899.

LILBURN P. PALMER,
Clerk Supreme Court Utah.

Due service of the above admitted this July 27th, 1899.

A. C. BISHOP,
Attorney General of State of Utah.

25 Filed Jul- 20, 1899. Lilburn P. Palmer, clerk supreme court Utah.

In the Supreme Court of the United States.

In the Matter of the Petition of CHARLES L. MAXWELL for a Writ of Error to the Supreme Court of the State of Utah.

Assignment of Errors.

Comes now Charles L. Maxwell, petitioner for a writ of error to the supreme court of the State of Utah, by J. W. N. Whitecotton, his attorney, and says that the said supreme court of the State of Utah, in rendering its decision and judgment in this cause, erred in the following particulars, to wit:

1. The said court erred in upholding the validity of section ten of article one of the constitution and laws of the State of Utah, providing that a jury for the trial of felonies should be composed of eight persons only in cases not capital.

2. The said court erred in deciding that trying the plaintiff herein on a charge of robbery, which by the laws of the State of Utah is a felony, by only eight persons sitting in the place of a jury, and upon a verdict of guilty imprisoning him in the penitentiary for eighteen years, is not depriving him of his liberty without due process of law.

3. The said court erred in deciding that the said section ten of article one of the constitution of Utah and the laws of said State made in pursuance thereof do not abridge plaintiff's privileges and immunities as a citizen of the United States as guaranteed to him by the sixth and fourteenth amendments to the Constitution of the United States.

4. The said court erred in deciding that holding the plaintiff
26 to answer to a charge of robbery, unless upon a presentment or indictment of a grand jury, does not abridge his privileges and immunities as a citizen of the United States as guaranteed by the fifth and fourteenth amendments to the Constitution of the United States.

5. The said court erred in deciding that plaintiff was not entitled to be discharged from his imprisonment.

J. W. N. WHITECOTTON,
Attorney for Plaintiff in Error.

27 In the Supreme Court of the United States.

UNITED STATES OF AMERICA, }
In the State of Utah, County of Salt Lake, } ss:

I, Lilburn P. Palmer, clerk of the supreme court of the State of Utah, in pursuance of the writ of error heretofore allowed in the case wherein C. L. Maxwell is plaintiff in error and George N. Dow,

as warden of the Utah State prison, is defendant in error, do transmit, attached hereto, a transcript of the record and proceedings and opinion in said cause, together with the original petition for a writ of error, writ of error, citation, and assignment of errors, all in and of said court and cause, to the Supreme Court of the United States, and I hereby certify that said attached transcript of the record and proceedings and opinion is a full, true, and correct copy of the several originals thereof now on file or of record in my office.

In witness whereof I have hereunto set my hand and affixed the seal of the supreme court of the State of Utah this 21st day — July, A. D. 1899.

Seal Supreme Court, State of Utah, Jan. 4, 1896.

LILBURN P. PALMER,
Clerk Supreme Court of Utah.

Endorsed on cover: File No., 17,498. Utah supreme court. Term No., 384. Charles L. Maxwell, plaintiff in error, *vs.* George N. Dow, as warden of the Utah State prison. Filed August 25, 1899.

In the Supreme Court of the State of Utah.

C. L. MAXWELL, Plaintiff,
v.
GEORGE N. DOW, as Warden of the State Prison, Defendant. } Return of Writ.

George N. Dow, warden of the Utah State prison, to whom the annexed and within writ is directed, has now here before the court the body of C. L. Maxwell, therein named, as thereby commanded, and certifies that the cause of the detention of the said C. L. Maxwell is a warrant of commitment, directed to him, George N. Dow, warden of the State prison of the State of Utah, a copy of which said commitment is set forth in the said C. L. Maxwell's petition, marked "Exhibit C," and made a part thereof, issued in the manner and under the circumstances and for the purposes set forth in the petition of the said C. L. Maxwell, the plaintiff herein.

And the said George N. Dow says that said detention of the said C. L. Maxwell is under the authority and by virtue of the said judgment and commitment, and that the same is not in any manner illegal or unlawful, and that the matters and things alleged in said petition are not sufficient in law and do not constitute any reason in law why said plaintiff should be discharged.

Said defendant herewith returns said writ into court, which is hereto annexed, marked "Exhibit A," and made a part hereof.

Wherefore defendant prays that he may be discharged and hence dismissed with his costs.

G. N. DOW,
Warden of the State Prison.

A. C. BISHOP,
Attorney General, for Defendant.

"EXHIBIT A."

In the Supreme Court of the State of Utah.

C. L. MAXWELL, Plaintiff,
v.
GEORGE N. DOW, as Warden of the State Prison, Defendant. }

The State of Utah to George N. Dow, warden of the Utah State prison, Greeting:

We command you that you have the body of C. L. Maxwell, by you imprisoned and detained, as is averred, together with the time and cause of such imprisonment and detention, by whatsoever name

said C. L. Maxwell be called or charged, before the supreme court of the State of Utah, at the court-room of said supreme court, at the city and county of Salt Lake, on Monday, the 8th day of May, 1899, at ten o'clock a. m. of that day, to do and receive what shall then and there be considered concerning the said C. L. Maxwell; and have you then and there this writ.

Witness the Honorable George W. Bartch, chief justice of the supreme court of the State of Utah, the third day of May, 1899

[SEAL.] G. W. BARTCH.

Endorsed on back: In the supreme court of the State of Utah. C. L. Maxwell, plaintiff, *v.* George N. Dow, as warden of the *the* State prison, defendant. Return of writ. Filed May 24, 1899. L. P. Palmer, clerk. Due service and copy this May 24, 1899. J. W. N. Whitecotton, attorney for petitioner.

UNITED STATES OF AMERICA, } ss:
State of Utah, County of Salt Lake, }

I, Lilburn P. Palmer, clerk of the supreme court of the State of Utah, do hereby certify that the foregoing is a full, true, and correct copy of the return of the writ in the foregoing-entitled action, now of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court this the 19th day of October, A. D. 1899.

[Seal State of Utah Supreme Court, Jan. 4, 1896.]

LILBURN P. PALMER,
Clerk Supreme Court.

In the Supreme Court of the United States.

CHARLES L. MAXWELL, Plaintiff in Error, *vs.* GEORGE N. DOW, as Warden of the *United* States Prison, Defendant in Error.	No. 384, October Term, 1899. Stipulation.

It is hereby stipulated and agreed that the foregoing is a full and true copy of the original writ of *habeas corpus* and the defendant's return thereto as the same appears on file in the supreme court of the State of Utah in said cause, and it is further stipulated and agreed that the same may be filed in the Supreme Court of the United States in said cause and printed as a part of the record in said cause.

It is further stipulated that the foregoing are the only portions of

the original record not heretofore sent up by the clerk of the supreme court of the State of Utah.

Dated October 31st, 1899.

J. W. N. WHITECOTTON,
Attorney for Plaintiff in Error.
L. T. MICHENER,
ALEXANDER C. BISHOP, *Att'y Gen'l,*
Attorney- for Defendant in Error.

[Endorsed:] File No., 17,498. Supreme Court U. S., October term, 1899. Term No., 384. Chas. L. Maxwell, P. E., *vs.* George N. Dow, as warden of the Utah State prison. Stipulation and addition to record. Filed Nov. 6, 1899.